

§41.81

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any further request for rehearing under paragraph (d) of this section, the owner and all requesters may once file comments in opposition to the request for rehearing or the further request for rehearing. The comments in opposition must be limited to the issues raised in the request for rehearing or the further request for rehearing.

(d) If a party to an appeal files a request for rehearing under paragraph (a) of this section, or a further request for rehearing under this section, the Board shall render a decision on the request for rehearing. The decision on the request for rehearing is deemed to incorporate the earlier opinion reflecting its decision for appeal, except for those portions specifically withdrawn on rehearing and is final for the purpose of judicial review, except when noted otherwise in the decision on rehearing. If the Board opinion reflecting its decision on rehearing becomes, in effect, a new decision, and the Board so indicates, then any party to the appeal may, within one month of the new decision, file a further request for rehearing of the new decision under this subsection. Such further request for rehearing must comply with paragraph (b) of this section.

(e) The times for requesting rehearing under paragraph (a) of this section, for requesting further rehearing under paragraph (c) of this section, and for submitting comments under paragraph (b) of this section may not be extended.

§41.81 Action following decision.

The parties to an appeal to the Board may not appeal to the U.S. Court of Appeals for the Federal Circuit under §1.983 of this title until all parties' rights to request rehearing have been exhausted, at which time the decision of the Board is final and appealable by any party to the appeal to the Board.

Subpart D—Contested Cases

§41.100 Definitions.

In addition to the definitions in §41.2, the following definitions apply to proceedings under this subpart:

Business day means a day other than a Saturday, Sunday, or Federal holiday within the District of Columbia.

Involved means the Board has declared the patent application, patent, or claim so described to be a subject of the contested case.

§41.101 Notice of proceeding.

(a) Notice of a contested case will be sent to every party to the proceeding. The entry of the notice initiates the proceeding.

(b) When the Board is unable to provide actual notice of a contested case on a party through the correspondence address of record for the party, the Board may authorize other modes of notice, including:

(1) Sending notice to another address associated with the party, or

(2) Publishing the notice in the *Official Gazette of the United States Patent and Trademark Office*.

§41.102 Completion of examination.

Before a contested case is initiated, except as the Board may otherwise authorize, for each involved application and patent:

(a) Examination or reexamination must be completed, and

(b) There must be at least one claim that:

(1) Is patentable but for a judgment in the contested case, and

(2) Would be involved in the contested case.

§41.103 Jurisdiction over involved files.

The Board acquires jurisdiction over any involved file when the Board initiates a contested case. Other proceedings for the involved file within the Office are suspended except as the Board may order.

§41.104 Conduct of contested case.

(a) The Board may determine a proper course of conduct in a proceeding for any situation not specifically covered by this part and may enter non-final orders to administer the proceeding.

(b) An administrative patent judge may waive or suspend in a proceeding the application of any rule in this subpart, subject to such conditions as the administrative patent judge may impose.